

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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Cedric Greene,

Plaintiff,

v.

Logisticare Solutions, LLC,

Defendant.

Case No. 2:15-cv-00523-RFB-NJK

ORDER ADOPTING REPORT AND
RECOMMENDATION

Before this Court are a Report and Recommendation, ECF No. 4, and a Motion to Dismiss, ECF No. 6. As discussed below, the Report and Recommendation is adopted and the Motion to Dismiss is denied as moot.

I. Background

On March 23, 2015, Plaintiff Cedric Greene filed an Application for Leave to Proceed *in Forma Pauperis*. ECF No. 1. Magistrate Judge Koppe denied the Application without prejudice. ECF No. 2. On April 8, Greene filed a second Application. ECF No. 3.

On April 10, 2015, Judge Koppe granted the second Application and screened Greene's Complaint, pursuant to 28 U.S.C. 1915(e). ECF No. 4. Upon screening the complaint, Judge Koppe recommended this Court dismiss the action without prejudice because of improper venue. Id. at 3:16, 4:5–7. On April 23, Greene objected. ECF No. 9.

On April 14, 2015, Defendant Logisticare Solutions, LLC ("Logisticare") moved to dismiss for failure to state a claim upon which relief can be granted, "should the Court fail to dismiss Plaintiff's motion on the grounds of improper venue." Mot. to Dismiss 5:14–19, ECF No. 6. Greene moved to strike the motion to dismiss. ECF No. 10. The Court denied Greene's Motion

1 to Strike and ordered Greene file a response by May 21, 2015. No response was filed.

2 On May 18, 2015, Greene filed a Motion for Disclosure of Discovery, which Judge Koppe
3 denied. ECF Nos. 15, 16.

4 5 **II. Report and Recommendation**

6 **A. Legal Standard**

7 A district court “may accept, reject, or modify, in whole or in part, the findings or
8 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). A party may file specific
9 written objections to the findings and recommendations of a magistrate judge. 28 U.S.C. §
10 636(b)(1); Local Rule IB 3-2(a). When written objections have been filed, the district court is
11 required to “make a de novo determination of those portions of the report or specified proposed
12 findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); see also Local
13 Rule IB 3-2(b). Where a party fails to object, however, a district court is not required to conduct
14 “any review,” *de novo* or otherwise, of the report and recommendations of a magistrate judge.
15 Thomas v. Arn, 474 U.S. 140, 149 (1985).

16 **B. Discussion**

17 Here, Greene timely objected to the Report and Recommendation. Accordingly, the Court
18 reviews the *de novo* the portions to which Greene has objected. Greene objects to the
19 Recommendation’s finding that venue is improper.

20 28 U.S.C. § 1391(b) establishes by statute three general situations in which venue is
21 appropriate. First, if all defendants are residents of the state in which the district is located, venue
22 is proper in a district in which any defendant resides. 28 U.S.C. § 1391(b)(1). Alternatively, venue
23 is proper in a district in which a “substantial part of the events or omissions” giving rise to the
24 claim occurred, or in which a “substantial part of property” that is the subject of the action is
25 situated. 28 U.S.C. § 1391(b)(2). Finally, if there is no district in which venue proper based on
26 residence or location of events or omissions, venue is proper where any defendant is subject to the
27 court’s personal jurisdiction. 28 U.S.C. § 1391(b)(3). “The district court of a district in which is
28 filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of

1 justice, transfer such case to any district or division in which it could have been brought.” 28
 2 U.S.C. § 1406(a). A district court has authority to raise the issue of defective venue *sua sponte*.
 3 Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986).

4 Here, Greene’s Complaint alleges that Logisticare was negligent in providing care. Compl.
 5 1:26–2:2. The allegedly negligent care involves transport from Greene’s home for doctor
 6 appointments. Id. at 2:10–12. While the Complaint does not allege where this transport occurred,
 7 Greene’s address at the top of the Complaint indicates he is in Los Angeles, California. Id. at 1:2.
 8 Because the medical transport issues involve the services of cab companies, id. at 2:19–28, it
 9 appears from the Complaint that the transportation at issue is local in nature. Based on Complaint,
 10 it thus appears that both the plaintiff and the “events or omissions” giving rise to the claim occurred
 11 outside Nevada. Accordingly, based on the Complaint, venue is not proper under 28 U.S.C. §
 12 1391(b)(2).

13 Furthermore, the Complaint includes no allegations whatsoever regarding Logisticare’s
 14 residence and thus fails to establish venue under 28 U.S.C. § 1391(b)(1). Therefore, the Complaint
 15 fails to establish that venue is proper.

16 In his Objection, Greene does not appear to dispute that impropriety of venue. Obj. 2:11,
 17 ECF No. 9. Rather, Greene requests “that this Court grant him the permission to litigate this case
 18 in its current venue as a ‘special circumstance matter.’” Id. at 2:14–15. This the Court cannot do.
 19 Greene cites no authority, and the Court is aware of no authority, supporting the proposition that
 20 this Court can disregard 28 U.S.C. § 1406(a), which states the district court *shall* dismiss or transfer
 21 a case brought in an improper venue. But cf. Au-Yang v. Citibank, N.A., 872 F.2d 426 (9th Cir.
 22 1989) (holding that the selection *between options* of dismissal and transfer for improper venue is
 23 a matter of discretion).

24 Greene’s Objection describes the difficulty he has in filing in California courts. Objection
 25 2, ECF No. 9. Greene further disputes the validity of his “vexatious” label in certain California
 26 courts, id. at 2:27–3:4, which is a matter raised in the Report and Recommendation, 2:7–22, ECF
 27 No. 4. While the Court understands Greene may face challenges in other courts, such challenges
 28 and labels as “vexatious” in California are simply not relevant to this Court’s evaluation of whether

1 venue is proper *here*. As required by federal statute, for purposes of venue this Court must
2 determine whether this case is related to Nevada in certain specific ways. See 28 U.S.C. § 1391(b).
3 Here, for the reasons already described, the Court concludes that the Complaint fails to establish
4 that venue is appropriate in the District of Nevada.

5 Accordingly, the Court adopts the Report and Recommendation and Greene's Complaint
6 is dismissed, without prejudice. Greene shall have thirty days to file an amended complaint that
7 properly establishes venue in the District of Nevada.

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9 **III. Motion to Dismiss**

10 Because the Court has adopted the Report and Recommendation, Logisticare's Motion to
11 Dismiss is denied as moot. Logisticare may re-raise appropriate arguments in response to a future
12 amended complaint.

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14 **IV. Conclusion**

15 For the reasons discussed above, IT IS ORDERED that Report and Recommendation, ECF
16 No. 4, is ADOPTED.

17 IT IS FURTHER ORDERED that Complaint, ECF No. 5, is DISMISSED without
18 prejudice. Greene shall have until August 7, 2015 to file an amended complaint.

19 IT IS FURTHER ORDERED that Motion to Dismiss, ECF No. 6, is DENIED without
20 prejudice.

21 Dated: July 8, 2015.

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Richard F. Boulware II
United States District Court